

APPEAL NO. 041634
FILED AUGUST 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing (CCH) was held on June 7, 2004. The hearing officer decided that the respondent's (claimant herein) compensable injury of _____, includes an injury to the cervical spine diagnosed as a cervical strain and cervicgia. The appellant (carrier herein) files a request for review in which it argues that this determination was contrary to the evidence. The carrier also asserts that the parties incorrectly identified the employer and the carrier in this matter. The claimant filed a response, noting that the parties stipulated as to the identity of the employer and the carrier and urging affirmance.

DECISION

We reverse and remand.

The carrier's attorney asserts that the employer and the carrier were misidentified throughout the proceeding below. The parties stipulated that on the date of the claimant's injury, _____, his employer was (company 1) and that the carrier was (carrier 1). The claimant worked at a (company 2) that the parties thought to be owned by company 1. The carrier states after the hearing that company 2 was bought on October 11, 2001 by (company 3) and that its carrier is (carrier 2).

While the carrier attaches an affidavit to its appeal to support its position, we cannot simply set aside stipulations based upon the representations of one party. Further, it is unclear whether or not carrier 2 is aware that it is now being contended that it is liable for this claim. It is unclear if the carrier's attorney has the authority to act for carrier 2. It could be that carrier 1 is associated with carrier 2 and that the carrier's attorney is authorized to speak for both entities. On the other hand, this may not be the case. We simply do not know, and we decline to guess.

We, therefore, reverse the decision of the hearing officer and remand this case to him to determine the identity of the employer and the carrier on the date of injury. The hearing officer may convene another CCH if he feels this is necessary. He should in any event make certain that all affected parties—including both carriers and the claimant—are given an opportunity to be heard on the issue.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude

Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The carrier represented at the CCH that the true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge